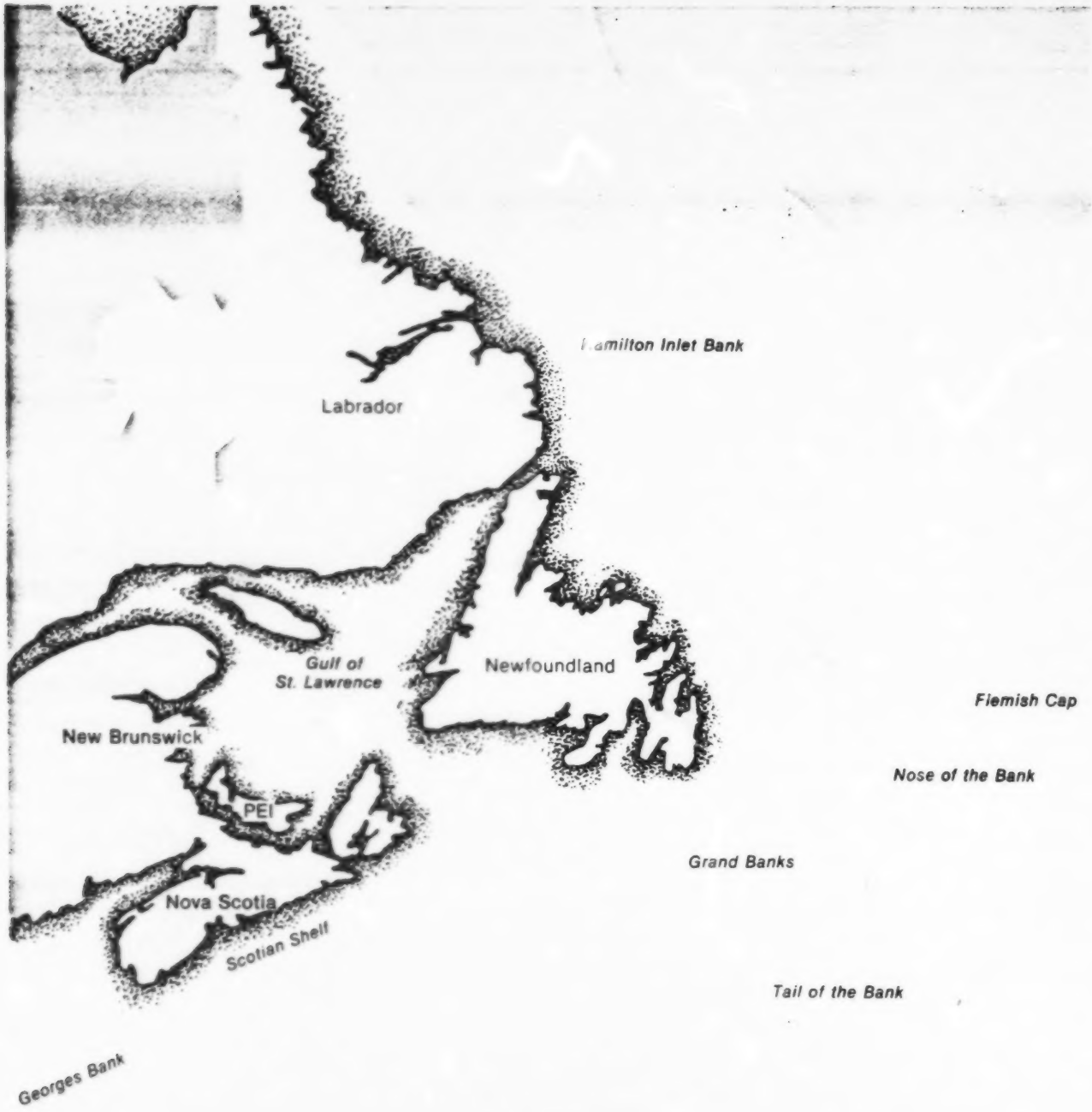
GOVERNMENT OF
NEWFOUNDLAND
AND LABRADOR

THE PROBLEM OF FOREIGN OVERFISHING OFF CANADA'S ATLANTIC COAST

ST. JOHN'S
August, 1986.



Major Cod Stocks 1984

1 Northern Cod
2 Gulf of St. Lawrence Cod
3 Grand Banks/St. Pierre Bank Cod
4 Scotian Shelf Cod

Continental Shelf
Canada's 200 Mile Limit

INTRODUCTION

As a result of decisions taken at last year's Premiers' Conference, and at the November First Ministers' Conference, federal and provincial governments in Canada have been discussing issues relating to our seacoast and inland fisheries. The most important issue addressed, from the perspective of the Province of Newfoundland, has been foreign overfishing off Canada's Atlantic Coast.

Foreign overfishing constitutes a challenge to Canada's sovereignty and a threat to a valuable Canadian renewable resource. This Information Paper briefly outlines the extent of the foreign overfishing problem off Canada's Atlantic Coast, an issue of national concern with international dimensions.

The purpose of this paper is to promote an understanding of this issue among all Canadians.

BACKGROUND

Foreign overfishing is not a new issue to Canadians. It constituted the single greatest threat to the Canadian fishing industry in the 1960's and 1970's. For over two decades prior to the declaration of the 200 mile limit in 1977, foreign fleets undertook an unprecedented harvest of all major groundfish stocks off the east coast of Canada.

Northern cod, capelin, Grand Bank cod and haddock, and Scotian Shelf cod and haddock, were some of the main stocks overexploited by foreign fleets in this period. As a result of the foreign fishing, Canadian fishermen's catches were severely reduced, and in some cases, decimated. Many valuable fish stocks were so badly overexploited that they have not yet recovered.

Under pressure from the fishing industry and provincial governments on the east coast, Canada undertook successive unilateral and multilateral measures to protect the marine resources of our Continental Shelf. In 1970 the Gulf of St. Lawrence and Bay of Fundy were declared to be within Canada's exclusive jurisdiction, and elsewhere Canadian fisheries jurisdiction was extended to 12 miles from our coastline.

These measures were not enough. The richest fishing grounds off our Atlantic coasts exist on the submerged plateaus or "banks" of our offshore Continental Shelf. As many traditional coastal fishing grounds around the world were being plundered by international fleets in the post World War II years, the United Nations Conferences on the Law of the Sea grappled with a solution. The solution posed in these Conferences came, by arbitrary compromise, to constitute a "200 Mile" exclusive economic zone, which coastal states could declare beyond their coastline. This was an ideal solution for most countries with coastal fishing industries because, in almost all cases, the Continental Shelf does not exceed 200 miles. (On our Pacific Coast, for example, the Shelf does not exceed 50 miles.)

Unfortunately, Canada's Atlantic Continential Shelf extends farther than the arbitrary limit of 200 miles. Some of Canada's richest fishing grounds exist on this shelf, in particular on the Grand Banks of Newfoundland, but are bisected by the arbitrary 200-mile line, thus artificially dividing a single natural fish habitat. The map shows that the critical "Nose" and "Tail" of the Grand Banks of Newfoundland lie outside the 200 mile line. In these areas significant resources of cod, flounder, capelin, redfish and other species migrate across the 200 mile line. Thus a single marine resource ecosystem is artifically divided into two zones; one inside Canadian jurisdiction and one outside.

The Government of Newfoundland and Labrador, and the Canadian fishing industry, pushed hard in the 1970's to have a fisheries zone that included the full extent of the fisheries resources on the Grand Banks. At that time, however, the federal government acquiesced to a 200 mile limit, hoping that the resources inside the line could be thereby better conserved, and that international cooperation could achieve responsible resource management outside the line.

The enactment by Canada of a 200 mile extended fisheries jurisdiction on January 1, 1977, did result in an end to the shimmering cities of foreign vessels visible off the Nova Scotia and Newfoundland coasts at night. The foreign overfishing problem declined significantly after 1977. To our chagrin however, the problem has not gone away, but has merely moved farther out to sea, to the grounds just outside our 200 mile zone. As figure 1 shows, foreign overfishing is again increasing and now poses a major threat to the overall conservation of fisheries resources in the entire Grand Banks area.

THE PROBLEM TODAY

Fish harvesting and processing is a very important industrial sector in the economy of Newfoundland, and the Maritime Provinces. In other parts of Canada as well, marine harvests are a vital part of the economy. In Newfoundland alone, fish resources create direct employment for some 30,000 people, or 15 Percent of our total labor force. Shipments of fish products in 1985 totalled approximately $550 million, contributing 35% to the Province's Gross Domestic Product derived from manufacturing. The Atlantic fishery is the livelihood and sole basis of the economy in 600 communities along the coasts of Newfoundland and Labrador, and of many other communities in Quebec, New Brunswick, Prince Edward Island and Nova Scotia.

As noted, Canada's fish resources on all coasts have benefitted since 1977 from the 200 mile limit. Almost all groundfish stocks which are wholly within our zone have been restored to a stable, healthy level of sustained yield. This has not been accomplished without sacrifice and restraint on the part of domestic fishing fleets. Nonetheless, Canadians have come to recognize that wise stewardship of a renewable natural resource means conservative, careful exploitation at levels that will ensure a sustained harvest for future generations.

Canadian resource management has stimulated renewed optimism and economic stability in the Fisheries. It has contributed to one of Canada's great regional strengths, a competitive, ever-more productive fishing industry. Continued foreign overfishing is, however, the dark cloud on this promising horizon.

A number of stocks straddle the 200 mile limit. Cod and flounder on the southern Grand Banks are found partly outside in the "Tail" of the zone. For several years, this cod stock has been harvested by Spanish, Portuguese and other foreign fleets, far in excess of scientifically established quotas. In the past two years, overfishing of the lucrative flounder stocks have undertaken a dramatic increase.

On the "Nose" of the Grand Banks, the Northern Cod stock is being overfished by foreigners. This is Canada's largest single cod stock, and the basis of the economy of the entire north and east coast of the island of Newfoundland and of Labrador. In 1985 the West German fleet, allowed inside Canada's limit to take a legal quota of 9500 tons under a Canada-European Community Agreement, overfished an additional 18,000 tons from the same stock on the "Nose" of the Grand Banks just outside the Canadian zone. Since this action, other fleets have rushed in to take their share of the booty as well. In 1985 the international fisheries management authority, the Northwest Atlantic Fisheries Organization (NAFO), imposed a moratorium on fishing in this area. Unfortunately foreign nations, including some NAFO members, have chosen to ignore that moratorium, and the unregulated overfishing of this stock persists.

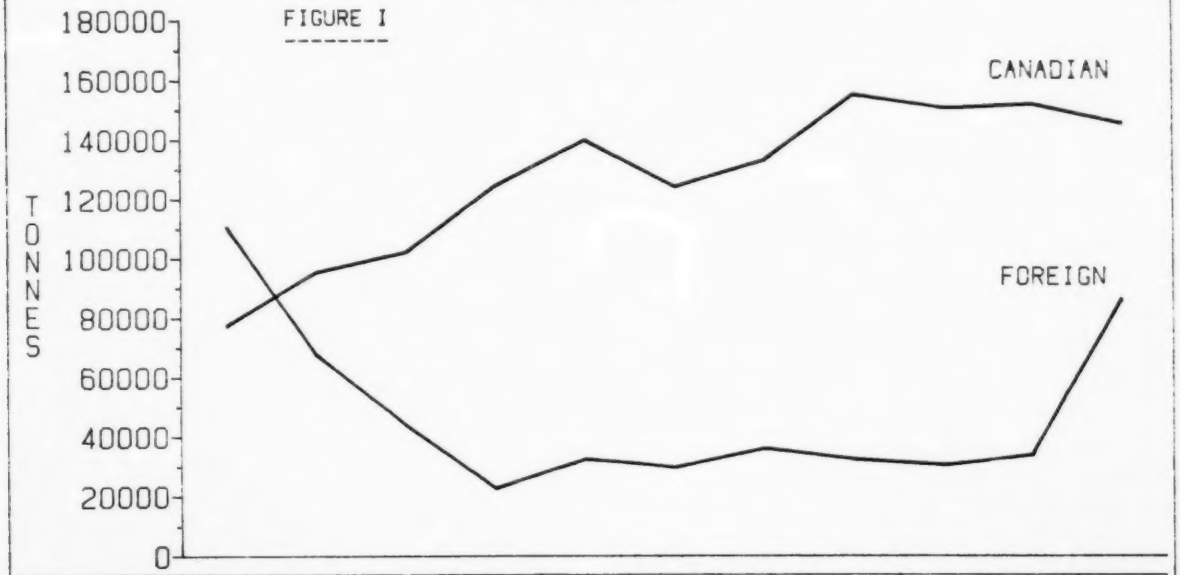
The total foreign catch from the Grand Banks area in the past five years is indicated in Figure 1. It is estimated that in 1985 foreign fleets took approximately 86,000 tons of cod and flounder, compared to approximately 145,000 tons of Canadian harvest in the same area. This amount of fish, if landed and processed in Canada, could provide employment for about 2500 Canadians, and sales of about $100 million for Canadian processing firms. It should be noted that these estimates are quite conservative. It is the view of the Canadian industry that the actual foreign catch exceeds these estimates by as much as fifty (50) percent.

Of greater and more urgent concern than these present levels however, is the trend of foreign fishing, which is upwards and unrestrained after years of conservative stewardship by Canada. Canadians have in recent months seen the visible evidence of foreign overfishing in the news, with the arrest of foreign vessels. That attention is focussed on incursions by foreign vessels into the Canadian zone. Such violations of sovereignty cannot be tolerated, and we welcome the efforts of the Government of Canada to increase its fisheries surveillance and enforcement of the 200 mile limit.

But to end our efforts there, to merely police an arbitrary line across the ocean for its own sake, will not solve the continuing problem of overfishing by hundreds of foreign vessels on what are essentially Canadian fish stocks just outside our zone. Must Atlantic fishermen and fish processors see their resource overexploited by rapacious international fleets, and once again pay the price in decimated stock levels? Is there not a way to extend Canadian conservation measures to include those small portions of our Continential Shelf on the "Nose" and "Tail" of the the Grand Banks which are beyond 200 miles?

CANADIAN AND FOREIGN COD AND FLOUNDER CATCHES
ON THE GRAND BANKS *
1975 TO 1985

FIGURE I



YEAR	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
tonnes	0										
CANADIAN	77027	95177	102050	124378	139728	124017	132976	154953	150490	151829	145346
FOREIGN	110397	67382	43616	22504	32367	29521	35857	32177	30342	33807	86000

* NOTE: IN NAFO AREAS 3L, 3N, &3O

SOURCE: FOR 1975-84, CALCULATED FROM NAFO STATISTICAL BULLETINS, VARIOUS VOLUMES;
FOR 1985, GOVERNMENT OF NEWFOUNDLAND AND LABRADOR ESTIMATE.

THE SOLUTIONS

A solution to the foreign overfishing problem on the "Nose" and "Tail" of the Grand Banks must be found. All potential solutions involve sensitive international considerations, and many hinge on detailed aspects of international law and the operation of international cooperative institutions. It is important to review the main instruments available to address the foreign overfishing problem:

1) Multilateral cooperation
2) Bilateral cooperation
3) The Law of the Sea Convention, and
4) Extended Functional Jurisdiction.

1. Multilateral Cooperation

Prior to extension of Canada's 200 mile limit, all of the major groundfish stocks in the Northwest Atlantic came under the jurisdiction of the International Commission for the Northwest Atlantic Fisheries (ICNAF). Established by Convention in 1949, this regional organization had 16 member countries consisting of both the traditional and more recent foreign harvesters of fish on the Continental Shelf of Canada and Newfoundland. ICNAF was a dismal failure in conserving the resource. It only began to establish quotas in 1972, years too late, and its limits on catches were set too high, and were barely enforced.

ICNAF failed because there was no collective will to conserve the resource, and only voluntary compliance with its rules. After the extension of Canadian jurisdiction, the Northwest Atlantic Fisheries Organization (NAFO) replaced ICNAF. It has management control over those stocks which straddle or lie wholly outside the Canadian zone. Its membership is largely the same as ICNAF - and it is becoming as ineffective. Enforcement and surveillance is weak and compliance still voluntary. NAFO's catch levels are set in some cases well above Canadian standards, and its lax rules and enforcement provide ample room for the overfishing that is occurring in the NAFO regulatory area. The current operation of NAFO clearly shows the limitations of the multilateral cooperative instrument for conserving fisheries resources.

2. Bilateral Cooperation

Canada has signed bilateral agreements with each of the major fishing nations which are members of NAFO. These agreements stipulate conditions which allow vessels of that country inside Canada's zone to take surplus fish (and in some cases, "non-surplus" fish) in return for cooperation in conservation outside our zone. This instrument has met with limited success as well. In 1985, EEC fishermen, under a six year Canada-EEC agreement, fished their legal allocations of 9500 tons of northern cod inside the zone, then proceeded to fish illegally a further 18,000 tons from the same stock. The federal government has not cancelled this agreement which the EEC refuses to recognize as binding them to conservation measures. And for countries such as Spain, the principal violator in terms of overfishing, there has been no bilateral agreement in force since 1980. Overall, then, the bilateral agreement instrument is becoming less and less effective.

3. Law of the Sea Convention/Geneva Convention

The Law of the Sea (L.O.S.) Convention of 1982 and the Geneva Convention of the Living Resources of the High Seas of 1958 both refer to the special rights and interests of the coastal state to the fisheries resources of its adjacent seas. The L.O.S. Convention specifically calls for regional organizations to take measures to conserve the resources of the adjacent seas bearing in mind the special interest of the coastal state. "NAFO" is the regional organization of relevance to the Canadian Atlantic Coast, and, as noted, has thus far failed in its efforts to manage the stocks in the "adjacent areas" (i.e. control unregulated overfishing).

It is possible that, as the L.O.S. Convention is ratified by a sufficient number of countries (it has not been to date), international courts of justice could arbitrate on Canada's allegations of the failure of NAFO to take appropriate conservation measures. Canada must ensure that it fully avails of all the rights that are created by the L.O.S. Convention, as it constitutes customary international law even before it is fully ratified. Nonetheless, full use of L.O.S. rights is most likely a long term solution and cannot address the immediate overfishing problem.

4. Extension of Functional Jurisdiction

This instrument relies on the logical extension of past Canadian practice, within an evolving practice of international law. Canada acted unilaterally to secure its national interests:

- in 1964 when it adopted straight baselines to demarcate the territorial sea;
- in 1970, when it declared the Gulf of St. Lawrence and Bay of Fundy to be within Canada's jurisdiction;
- in 1970, when it asserted sovereignty over waters in the Arctic archipelago, and when it extended fisheries jurisdiction and the territorial sea outward twelve miles; and,
- most recently in 1977, when it declared jurisdiction to 200 miles.

Use of this instrument could now be made to enact a limited functional extension of Canada's fisheries jurisdiction to include the "Nose" and "Tail" of the Grand Banks. Canada already has jurisdiction over non-renewable seabed resources on the "Nose" and "Tail", and to the edge of the Continental Shelf.

If Canada were to extend jurisdiction over the indigenous living resources, as it has for the non-renewable seabed resources, it would fill the gap left by existing conventions and it would unify its jurisdiction. A "functional" extension to include the "Nose" and "Tail" of the Grand Banks would bring under a single jurisdiction virtually all of the important marine resources on which the Atlantic Canadian fishery depends.

Unfortunately, Canada is one of only three or four countries (e.g. Australia, New Zealand, Argentina) which have continental shelves wider than 200 miles. Canada is probably unique in its need to extend fisheries jurisdiction over a very limited area, beyond 200 miles. National action of the nature described would meet with objections from certain members of the international community, not least of which those countries now benefitting from overfishing. It is not a step to be taken lightly, but it is a step consistent with national precedents and with the rights accorded coastal states under international law.

Extended functional jurisdiction for fisheries conservation purposes is the preferred solution to the foreign overfishing problem by the Province of Newfoundland and the Canadian fishing industry. It has the merit of legal certainty and finality. It would bring under the single jurisdiction of Canada all of the most important fisheries resources of our continential shelf. It would permanently deprive foreign fleets of the option of hiding behind ineffective multinational organizations. Most important of all, the extended zone would bring under Canadian management the straddling stocks now being so severely depleted, restore their stability, and restore in turn the resource stability of the Atlantic groundfish industry as a whole.

CONCLUSION

The foreign overfishing problem described in this paper may be perceived as a local problem. It affects the livelihood of Canadians who live, in the main, in only one part of Canada. The violation of Canada's sovereignty and the pillage of its natural resources takes place far away from population centres, far away even from the coast of Newfoundland, 200 miles to the east in the Northwest Atlantic.

It is nonetheless a national problem touching on issues of concern to all Canadians: our national sovereignty, resource conservation, and, more so each year, the prospects for a major industry and an important regional strength in Canada.

The solution to the foreign overfishing problem requires a strong expression of national political will in the international community. The preferred solution of the Province of Newfoundland and the Canadian fishing industry, extended functional fisheries jurisdiction, will establish the basis for a stable, healthy fisheries resource that can bring substantial benefits to all Canadians.

APPENDIX

FOREIGN ALLOCATIONS/CATCHES ZONES 3L, 3N and 3O, 1985 (tonnes)

Area/Species	Allocations	Catch
3L Cod	16,200	31,148
3NO Cod	17,045	32,530
3LNO Amer. Plaice	710	13,000
3LNO Yellowtail	370	9,000
	34,325	85,678

Source: Government of Newfoundland and Labrador Estimate.

Note: Catch Statistics used in Figure 1 for 1975 to 1984 are based on NAFO Statistical Bulletins, and reflect reported and observed catches. Canadian industry and government estimates indicate that the actual level of catches in the 1982-84 period are closer to the 1985 figures, due to the practice of certain countries to underestimate their catches.

STATEMENT

BY

THE HONOURABLE A. BRIAN PECKFORD, P.C., M.H.A.
PREMIER OF NEWFOUNDLAND AND LABRADOR

"THE PROBLEM OF FOREIGN OVERFISHING OFF CANADA'S ATLANTIC COAST"

September 16th., 1986

I wish to release to you today a statement concerning a matter of vital concern to the fisheries of Newfoundland, and to the entire east coast of Canada: the problem of foreign overfishing off Canada's Atlantic coast.

We are releasing this paper to the public today, but this issue and the paper were discussed with the Federal Cabinet's Planning and Priorities committee, when they met here in St. John's two weeks ago.

The problem of foreign overfishing has become much worse in the last two years. As our inshore fishermen have discovered, Northern Cod is not coming inshore the way it should. We feel that foreign overfishing on the "Nose" of the Grand Banks is a major contributor to this problem.

The paper released today addresses foreign overfishing in two ways. First it reviews the problem of overfishing,

which many Canadians no doubt thought had been resolved back in 1977, with the 200 mile limit. Second, it reviews the potential solutions to the problem, and proposes what the Canadian fishing industry and the Government of Newfoundland consider to be the only feasible solution.

In outlining the "problem", this paper demonstrates how the 200 mile limit, since 1977, has helped to bring foreign overfishing under control inside the limit, but that it has not succeeded in stopping the overfishing outside the limit. Small sections of our Continental Shelf lie outside 200 miles - on the "Nose" and "Tail" of the Grand Banks. Valuable stocks of Northern Cod, Grand Banks Cod, American Plaice and Yellowtail Flounder migrate in these areas. It is in these areas that foreign fleets have focused their efforts, in complete disregard for Canada's interests and international quota management.

Our officials, having consulted with the fishing industry and the federal government, have estimated that in 1985, foreign fleets, while allocated legal quotas of 34,000 tons in the area, went on to overfish a total of 86,000 tons, compared to a Canadian harvest of 145,000 tons from the some stocks. To illustrate how much worse this problem has become, this conservative estimate of foreign catch is easily three times that estimated only two years ago, and could double again in the next two years. That 86,000 tons, if landed and processed in Canada, could bring sales of 100 million dollars and 2500 jobs, mostly in Newfoundland.

And that is not the only loss to Canada as a result of this overfishing. As we are beginning to see with the inshore this year and last, the unrestrained fishing by West German, Spanish, Portuguese and other foreign fleets may seriously affect the resource available to Canadian fishermen, with even lower catches and economic activity as a result.

What is the solution to this international problem? As an international fisheries issue, this matter is outside provincial jurisdiction. Hon. Tom Rideout, has, however, been discussing this issue at length in meetings with Hon. Tom Siddon, federal Minister of Fisheries and Oceans, since last January, and I have raised it with the Prime Minister on a number of occasions. We fully support the recent federal announcements that Canada will more strongly enforce its fisheries regulations, and seek greater resources to keep up surveillance, to observe and, if necessary, to arrest foreign violators within our zone. But this is only a part of the problem. To simply "police the line" will not solve the continued overfishing outside our zone.

The paper reviews the various international instruments available to Canada to address the problem. Canada has tried multilateral cooperation through NAFO (the Northwest Atlantic Fisheries Organization) and bilateral cooperation, through

allocations to foreign fleets for conservation cooperation. These methods have failed to stop the overfishing. They have only put off the consideration of longer-term solutions.

Our preferred solution, and the preferred solution of the Canadian fishing industry, is for Canada to extend its fisheries jurisdiction to include the "Nose" and "Tail" of the Grand Banks. This would be a logical step to the successive national decisions by Canada to gradually enlarge its fisheries jurisdiction.

What we propose is for Canada to extend its authority - only for fisheries conservation purposes - to the full extent of the Grand Banks, to bring under a single jurisdiction all of the most important fish stocks off our shores. This, we believe, is within the spirit of the Law of the Sea.

Extension of jurisdiction has been supported by the Canadian fishing industry, by Canada's provincial fisheries Ministers, and most recently, by all Canadian Premiers at the Premiers Conference last month in Edmonton.

We are releasing this paper today so that the general public will be aware of our position on this important issue.

We hope to raise the profile of this issue, to demonstrate its importance to this part of Canada. We hope that all Newfoundlanders will support us in taking this message to all Canadians. In this way, Canada can take a strong, united stand in the international community to protect our national heritage and the livelihood of our fishing industry.

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